

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS

SUPERIOR COURT

Docket No. 08-E-0053

**In the Matter of the Liquidation of
Noble Trust Company**

**LIQUIDATOR'S ASSENTED-TO MOTION TO APPROVE NOTICE
AND OBJECTION PROCEDURES FOR HEARING ON MOTION
AND INCORPORATED SUPPORTING MEMORANDUM
FOR APPROVAL OF SETTLEMENT AGREEMENT AND RELEASE
WITH SECURITY LIFE OF DENVER INSURANCE COMPANY**

Glenn A. Perlow, Bank Commissioner for the State of New Hampshire, in his capacity as Liquidator of Noble Trust Company (the "Liquidator" and "Noble Trust," respectively), by his attorneys, the Office of the Attorney General and Sheehan Phinney Bass + Green, Professional Association, moves for the entry of an order: (1) approving the method, manner and form of notice, including publication notice, to be given of the hearing to consider approval of the Liquidator's Motion and Incorporated Supporting Memorandum for Approval of Settlement Agreement and Release With Security Life of Denver Insurance Company (the "Settlement Motion"), whereby the Liquidator seeks approval of the Settlement Agreement and Release dated as of January 21, 2014 (the "Settlement Agreement") by and between the Liquidator and Security Life of Denver Insurance Company ("Security Life"); (2) scheduling the Settlement Motion for hearing; and (3) establishing a deadline by which any objections to the Settlement Motion must be filed and served. Determination of this motion without a hearing is appropriate because of the procedural nature of the relief requested (which is substantially similar to notice procedures previously approved by this Court in similar contexts in this proceeding), and because the

approval of such notice procedures will enable the Liquidator to promptly seek approval of the Settlement Motion. In support of this motion, the Liquidator states as follows:

1. The Liquidator has negotiated an arms'-length settlement with Security Life. As provided for in the Settlement Motion and in the Settlement Agreement, life insurance policy number 1612111 (the "Policy") dated October 26, 2006, issued by Security Life on the life of Karl M. Waters, Jr. (the "Insured"), who is reflected in Noble Trust's books and records as a Noble Trust client, shall be surrendered and deemed void *ab initio*.¹ In consideration for the surrender of the Policy, among other things, Security Life shall pay a litigation settlement payment and the Liquidator and Security Life shall release each other from all claims in connection with, arising out of, or in any way related to the subject matter of the Policy, which releases shall be binding on any and all other parties asserting an interest in the Policy. Upon approval of the Settlement Agreement by this Court, claims against Security Life and the Liquidator relating to disposition of the Policy under the Settlement Agreement shall be barred, and the surrender of the Policy shall be free and clear of all liens, claims and interests in the Policy of any kind or nature whatsoever held by any individual or entity. All such liens, claims and interests against the Policy shall be subject to allowance or disallowance as part of the claims adjudication process in the Liquidation Proceeding, including under any Plan of Liquidation that this Court may approve.

2. The Settlement Agreement contains material obligations and other information that the Liquidator and Security Life deem confidential. To protect those terms of the Settlement Agreement, the Liquidator has filed with the Settlement Motion a redacted Settlement Agreement and, upon approval of this Motion, will promptly file a confidential affidavit under

¹ The record owner of the Policy is the Karl Martin Waters, Jr. Irrevocable Life Insurance Trust as to which Noble Trust was co-Trustee.

seal that includes an un-redacted copy of the Settlement Agreement. Parties wishing to review the un-redacted Settlement Agreement may do so by contacting the Office of the Liquidator and following the procedure for review of the Settlement Agreement established by this Court's Order Establishing Settlement Agreement Review Procedures dated December 5, 2012, including the execution of a confidentiality agreement.

3. Due process requires the Liquidator to give notice of the hearing on the Settlement Motion to all parties who, to the best of the Liquidator's knowledge, have asserted or may assert an interest in the Policy and whose interests may be affected by the approval and implementation of the Settlement Agreement. With previous settlements, the Liquidator has sought and received a determination by this Court as to the adequacy of both the method and the manner of notice which the Liquidator proposes to be given to parties concerning settlement agreements, the hearings on their approval, and the procedures by which objections (if any) shall be filed and heard. With this Motion, the Liquidator seeks a similar determination and proposes the following notice procedures for the hearing on approval of the Settlement Motion.

4. In addition to serving all counsel who have filed appearances in this proceeding, upon approval of this Motion, the Liquidator proposes to serve a copy of a notice of hearing, substantially in the form attached hereto as Exhibit A (the "Notice of Hearing"), the Settlement Motion and the Affidavit of Robert A. Fleury In Support of Liquidator's Motion and Incorporated Supporting Memorandum for Approval of Settlement Agreement and Release With Security Life of Denver Insurance Company (the "Fleury Affidavit"), via certified and regular mail, return receipt requested, upon (a) all parties who have filed proofs of claim in the Liquidation Proceeding or their assignee if known to the Liquidator; (b) all attorneys who are not of record but who have identified themselves to the Liquidator in writing as representing a

person or entity claiming an interest in the Policy; and (c) all parties whose names are known to the Liquidator and not already described above, at their most recent address as shown in the books and records of Noble Trust in the Liquidator's possession or subsequently updated address that has been made known to the Liquidator, unless the Liquidator has knowledge that such address is no longer valid. The certified mailing to the Insured and any asserted beneficiaries of the Policy (non-residents of this state) will be provided in accordance with the long-arm statute, RSA 510:4.² That is, the Notice of Hearing, the Settlement Motion and the Fleury Affidavit will first be served upon the New Hampshire Secretary of State, and then served by certified mail, return receipt requested, to the last known abode or place of business of the Insured and any asserted beneficiaries of the Policy. In the event that the proposed service would result in multiple packages being served in the same manner to the same addressee at the same address, the Liquidator requests that service of a single package be sufficient for notice purposes.

5. In addition, the Liquidator proposes to publish notice of the hearing on the Settlement Motion, in order to provide notice to any other parties, including those whose names are known but whose current addresses are unknown to the Liquidator, and to those whose names are unknown to the Liquidator.

6. RSA 510:9, which governs publication by notice in general, provides:

Where notice by publication in a newspaper is ordered by any court upon any petition, writ or other similar process, the original of which is upon file in such court, it shall be sufficient to publish a citation containing the title of the case, the name of the court in which it is pending, the time and place of the return and hearing, the fact that such original is on file and may be examined by interested parties and such other facts as the court may order.

² This is in addition to the regular mail package that the Liquidator will serve on the non-resident.

7. The Liquidator requests that the proposed Notice of Hearing also serve as the form of publication notice of the Settlement Motion hearing (the "Publication Notice"). It contains all of the information required by RSA 510:9, including a proposed deadline for filing any objections to the Settlement Motion, and the manner in which any such objections must be served. The Liquidator proposes that the Publication Notice be published for two successive weeks in The Charlotte Observer (a newspaper of general circulation in North Carolina, the home state of the Insured) and the USA Today. Assuming that this Motion will be approved on or before February 4, 2014, the Publication Notice will be published in those papers beginning during the week of February 10, 2014 or as soon thereafter as publication can be arranged.

8. Finally, copies of the Publication Notice/Notice of Hearing, the Settlement Motion (including the redacted Settlement Agreement) and the Fleury Affidavit will be made available for review at the Office of the Clerk, Merrimack County Superior Court, 163 North Main Street, Concord, New Hampshire, 03302, or may be obtained upon request of The Office of Noble Liquidation, Attn: Abigail Shaine (Tel.: (603) 625-6733), or viewed on the New Hampshire Banking Department's web site (www.nh.gov/banking/noble-trust/).

9. In light of the comprehensive notice procedures set forth herein, *i.e.*, physical mailing by certified and regular mail, service on the Secretary of State in compliance with RSA 510:4 for the Insured and any asserted beneficiaries of the Policy, publishing of the Publication Notice in the manner described, posting of the Settlement Motion, the Fleury Affidavit and Notice of Hearing on the Banking Department's website, and availability of the pleadings at the Court or by request of the Liquidator, the Liquidator submits that service in this manner is reasonably calculated to reach those parties who might conceivably have an interest in the outcome of the Settlement Motion and is thus compliant with standards of due process. Service

shall be complete when the Liquidator makes a certificate of service to the Court certifying that he has complied with the notice procedures set forth herein. RSA 510:8.

10. The Liquidator proposes that the Court set a deadline for the filing of any objections to the Settlement Motion and that a hearing be scheduled to consider the approval of the Settlement Motion. In order to accommodate the publication schedule and to ensure due process by providing an adequate opportunity to object with a minimum of two weeks between the last possible publication date and the proposed objection deadline, the Liquidator proposes that the Court set the objection deadline as March 20, 2014 at 4:00 p.m.³ The Liquidator proposes that objections be required to be filed with the Clerk of this Court and served upon the Liquidator's counsel, counsel to Security Life (as set forth in the Settlement Motion), and other counsel of record so that they are actually received by all of the foregoing parties on or before the objection deadline; *i.e.* any objections filed with the Court must also be either hand delivered to counsel or, if served by mail, then also transmitted electronically to counsel that same day. The Liquidator proposes that a hearing be scheduled to consider the approval of the Settlement Motion on April 7, 2014. The hearing will be non-evidentiary and parties will not have discovery prior thereto.

11. The procedures proposed above are substantially similar to those that were already approved by this Court on November 27, 2012 and June 10, 2013, and are in accord with generally accepted principles of New Hampshire law such as RSA 510:9, which permit notice of judicial proceedings and hearings to be given by publication, or by a combination of mail and

³ Upon approval of this Motion, the Liquidator will commence the service set forth herein of the Settlement Motion, the Fleury Affidavit and the Notice of Hearing. The Liquidator shall complete such service on or before February 28, 2014 (20 days in advance of the proposed objection deadline). A certificate of service certifying such service will be filed by the Liquidator.

publication. Thus, the Liquidator believes that the notice procedures described herein comply in all respects with the notice and due process requirements of applicable law, and should be deemed sufficient to provide adequate notice of the hearing on the Settlement Motion, the issues to be decided at the hearing, and the deadline for filing objections to all parties in interest, including any parties who do not otherwise receive notice by mail. *Mullane v. Central Hanover Bank & Tr. Co.*, 339 U.S. 306 (1950); *In re Hiscoe*, 147 N.H. 223, 227 (2001)("[A]dequate notice is that which is reasonably calculated to give the parties actual notice of the issue or issues to be decided at the hearing. . . . Due process, however, does not require perfect notice, but only 'notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.'")(internal citations omitted).

12. Pursuant to Superior Court Rule 11(c), the Liquidator hereby certifies that all parties that have filed an appearance in the Liquidation Proceeding assent to the relief requested in this Motion. Accordingly, the Liquidator submits that determination of this Motion without a hearing is appropriate because of the procedural nature of the relief requested (which is substantially similar to notice procedures previously approved by this Court in similar contexts in this proceeding), and that the approval of such notice procedures will enable the Liquidator to promptly seek approval of the Settlement Motion. As a result, no party will be prejudiced by the relief requested herein, and the establishment of such notice procedures is in the best interest of the liquidation estate and will benefit the creditors of Noble Trust.

WHEREFORE, the Liquidator requests that the Court enter an order, in substantially the form attached hereto as Exhibit B, (a) finding that the foregoing notice procedures, the form of the notice, and the manner of its publication comply with the applicable standards of due process

of law, and provide adequate and sufficient notice to all interested persons of both the hearing on the Settlement Motion and the deadline for filing objections thereto; (b) authorizing and directing the Liquidator to implement the notice procedures; (c) setting March 20, 2014 at 4:00 p.m. as the deadline for the filing and service of any objections to the Settlement Motion; (d) scheduling a hearing on the approval of the Settlement Motion on April 7, 2014; and (e) granting the Liquidator such other and further relief as is just.

Respectfully submitted,

Dated: January 30, 2014

GLENN A. PERLOW, BANK COMMISSIONER OF THE
STATE OF NEW HAMPSHIRE,
AS LIQUIDATOR OF NOBLE TRUST COMPANY

By his attorneys,

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EXHIBIT A

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS

SUPERIOR COURT

Docket No. 08-E-0053

**In the Matter of the Liquidation of
Noble Trust Company**

NOTICE OF HEARING

PLEASE TAKE NOTICE that on _____, 2014 at _____, prevailing Eastern time, or as soon thereafter as counsel may be heard, a hearing will be held at the Merrimack County Superior Court, 163 North Main Street, Concord, New Hampshire, 03302, on the Motion and Incorporated Supporting Memorandum for Approval of Settlement Agreement and Release With Security Life of Denver Insurance Company (the "Settlement Motion") filed by the Liquidator of Noble Trust Company (the "Liquidator") to approve a settlement agreement and release (the "Settlement Agreement") with Security Life of Denver Insurance Company ("Security Life"), a copy of which is available for review during regular office hours at the Office of the Clerk of the Court, or may be obtained upon request of The Office of Noble Liquidation, Attn: Abigail Shaine (Tel.: (603) 625-6733), or viewed on the New Hampshire Banking Department's web site (www.nh.gov/banking/noble-trust/). The hearing may be adjourned from time to time by announcement in open Court at the first scheduled hearing or at adjourned hearings without further written notice to parties in interest. IF GRANTED, THE SETTLEMENT MOTION WILL RESULT IN THE SURRENDER, CANCELLATION, OR OTHER TERMINATION OF A CERTAIN LIFE INSURANCE POLICY ISSUED BY SECURITY LIFE TO OR FOR THE BENEFIT OF A NOBLE TRUST CLIENT, A RELEASE OF THE LIQUIDATOR AND SECURITY LIFE, AND THE ENTRY OF A BAR ORDER PERMANENTLY BARRING ALL CLAIMS BY ANY PERSON OR ENTITY AGAINST THE LIQUIDATOR AND SECURITY LIFE RELATING TO THE POLICY. YOU ARE URGED TO CAREFULLY AND THOROUGHLY REVIEW THE SETTLEMENT MOTION, THE SETTLEMENT AGREEMENT AND ALL OTHER RELATED PLEADINGS, AND CONSULT WITH YOUR OWN LEGAL ADVISORS AS YOU SEE FIT.

PLEASE TAKE FURTHER NOTICE that in accordance with the Court's orders, a redacted copy of the Settlement Agreement has been filed and served with the Settlement Motion. Parties wishing to review the un-redacted Settlement Agreement (subject to the continued redaction of personal identifying information) may obtain a copy of the Settlement Agreement by contacting The Office of Noble Liquidation (contact information above) and upon the execution of a confidentiality agreement. To the extent the redactions are of personal identifying information that an individual has requested be kept confidential, the Liquidator will not reveal such information without authorization from the particular individual or further order of the Court. To determine if a life insurance policy in which you may have an interest is affected by the Settlement Motion, you must contact The Office of Noble Liquidation during normal business hours.

PLEASE TAKE FURTHER NOTICE that objections to the Settlement Motion, if any, must be filed with the Clerk of Court at the above address, and served upon: (i) counsel for the Liquidator at their respective addresses shown below, (ii) counsel to Security Life (as set forth in the Settlement

Motion), and (iii) all other counsel of record (whose names and addresses may be obtained from the Office of the Clerk), so as to be actually received by all such parties on or before _____, 2014 at _____, prevailing Eastern time; *i.e.* any objections filed with the Clerk of the Court must also be either hand delivered to counsel or, if served by mail, then also transmitted electronically to counsel that same day.

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Dated: _____, 2014

EXHIBIT B

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS

SUPERIOR COURT

Docket No. 08-E-0053

**In the Matter of the Liquidation of
Noble Trust Company**

**ORDER APPROVING NOTICE AND OBJECTION
PROCEDURES FOR HEARING ON MOTION AND
INCORPORATED SUPPORTING MEMORANDUM FOR
APPROVAL OF SETTLEMENT AND RELEASE AGREEMENT
WITH SECURITY LIFE OF DENVER INSURANCE COMPANY**

Upon consideration of the Liquidator's Assented-To Motion to Approve Notice and Objection Procedures for Hearing on Motion and Incorporated Supporting Memorandum for Approval of Settlement Agreement and Release With Security Life of Denver Insurance Company (the "Procedures Motion"), pursuant to which Glenn A. Perlow, Bank Commissioner for the State of New Hampshire, in his capacity as Liquidator of Noble Trust Company (the "Liquidator" and "Noble Trust," respectively), seeks an order of this Court: (1) approving the method, manner and form of notice, including publication notice, to be given of the hearing to consider approval of the Liquidator's Motion and Incorporated Supporting Memorandum for Approval of Settlement Agreement and Release With Security Life of Denver Insurance Company (the "Settlement Motion"), whereby the Liquidator seeks approval of the Settlement Agreement and Release dated as of January 21, 2014 (the "Settlement Agreement") by and between the Liquidator and Security Life of Denver Insurance Company ("Security Life"); (2) scheduling the Settlement Motion for hearing; and (3) establishing a deadline by which any objections to the Settlement Motion must be filed and served; adequate notice of the Procedures Motion having been provided; the notice procedures described in the Procedures Motion comply

in all respects with the applicable notice requirements of New Hampshire law, and are sufficient to provide adequate notice of the Settlement Motion, the hearing on the Settlement Motion, and the deadline for filing objections thereto; there being no objections made to the relief requested; and, after due deliberation and sufficient cause appearing therefor; it is hereby

ORDERED, ADJUDGED, AND DECREED THAT:

1. The Procedures Motion is granted, and all notice and objection procedures set forth therein are approved.
2. Parties wishing to review the un-redacted Settlement Agreement may do so by contacting the Office of the Liquidator and following the procedure for review of the redacted settlement agreements established by this Court's Order Establishing Settlement Agreement Review Procedures dated December 5, 2012, including the execution of a confidentiality agreement.
3. The Notice of Hearing, which shall also serve as the Publication Notice, in the form substantially attached to the Procedures Motion is approved.¹ The Liquidator is authorized and directed to cause the Publication Notice to be published for two successive weeks beginning during the week of February 10, 2014 or as soon thereafter as publication can be arranged in The Charlotte Observer (a newspaper of general circulation in North Carolina, the home state of the Insured), and the USA Today.
4. Notice of the Settlement Motion in the manner set forth in the Procedures Motion, *i.e.*, physical mailing by certified and regular mail, service on the Secretary of State in compliance with RSA 510:4 for the Insured and any asserted beneficiaries of the Policy, publishing of the Publication Notice in the manner described, posting of the Settlement Motion,

¹ Capitalized terms used in this Order and not otherwise defined herein are intended to have the same meaning as ascribed to them in the Procedures Motion.

the Fleury Affidavit and Notice of Hearing on the Banking Department's website, and availability of the pleadings at the Court or by request of the Liquidator, complies with applicable standards of due process of law, and provides adequate and sufficient notice to all parties, including those whose names are known but whose current addresses are unknown to the Liquidator, and to those whose names are unknown to the Liquidator, who might conceivably have an interest in the Settlement Motion, the hearing on the Settlement Motion, the issues to be decided at the hearing, and the deadline for filing objections.

5. Service shall be complete when the Liquidator makes a certificate of service to the Court certifying that he has complied with the approved notice procedures.

6. On April 7, 2014 at __: __ .m., a hearing will be held before the Court to consider approval of the Settlement Motion.

7. Any objections to the Settlement Motion must be filed by 4:00 p.m. (prevailing Eastern Time) on March 20, 2014 (the "Objection Deadline") with the Office of the Clerk, Merrimack County Superior Court, 163 North Main Street, Concord, New Hampshire 03302, and also served so as to be received by the Objection Deadline on (a) counsel to the Liquidator; (b) counsel to Security Life (as set forth in the Settlement Motion); and (c) upon all other counsel of record (whose names and addresses may be obtained from the Clerk's Office). Any objections not filed and served in accordance with this Order shall not be considered.

Dated: _____, 2014

Hon. Larry M. Smukler